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Official Records

Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

1443rd Meeting
Tuesday, 11 July 1995, 10 a.m.
New York

Acting Chairman: Mr. Bangura . . . . . (Sierra Leone)

The meeting was called to order at 10.50 a.m.

Question of Gibraltar (A/AC.109/2025)

The Chairman: The Committee has before it a working paper prepared by the Secretariat, contained in document A/AC.109/2025.

I wish to inform members that the delegation of Spain has indicated its wish to participate in the Committee's consideration of this question. In accordance with established practice, and if I hear no objection, I shall invite the delegation of Spain to take a place at the Committee table.

At the invitation of the Chairman, Mr. Pérez-Griffo (Spain) and members of his delegation took a place at the Committee table.

The Chairman: In connection with this item, I wish to inform the Committee that the Chief Minister of Gibraltar, the Honourable Joe Bossano, has expressed the wish to make a statement. Subject to members' consent and in accordance with standing procedure, I suggest that the Committee invite him to make a statement.

It was so decided.

At the invitation of the Chairman, Mr. Joe Bossano, Chief Minister of Gibraltar, took a place at the Committee table.

The Chairman: I now call on the Chief Minister of Gibraltar.

Mr. Bossano: I wish to thank you, Sir, for giving me the opportunity once again to address the Special Committee on behalf of the people of Gibraltar.

Last month, we celebrated the fiftieth anniversary of the signing of the Charter of the United Nations. The issue of decolonization has been at the very heart of the work of the United Nations and of its growth in membership from 51 to 185, and Gibraltar has been a part of this almost from the beginning. In 1946, the United Kingdom submitted the name of Gibraltar as an administered Territory, with respect to which it would transmit reports to the United Nations, in accordance with Article 73 *e* of the Charter. It has submitted such reports, which have been considered by this Committee, since 1963.

My Government's decision to pursue the rights of Gibraltarians to self-determination and decolonization by direct representation before this Committee and the Fourth Committee marked a watershed in the development of the people of the Territory in respect of these questions. As I mentioned in my first address to the Special Committee in 1992, there had been a 25-year gap during which Gibraltar did not seek to put its views to this Committee. This had created the erroneous impression that the Special Committee was insensitive and perhaps even hostile to the aspirations of the Gibraltarians.

I am happy to report that there has been a complete turnaround in the situation. This Committee is now clearly seen — as it should be — as one that is responsive to the views of the colonial people and one

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that welcomes the opportunity to hear such views, so that it will be in a better position to address the issue of decolonization from the perspective of giving priority to the wishes of the people of the Territory over any other factor.

As members are aware, we have given the widest possible publicity in the Territory to the work of the Special Committee and to my appearances before the United Nations in accordance with the provisions of the Charter and of United Nations resolutions. The impact of this dissemination of information about the programme for decolonization and the Plan of Action has raised expectations among the people of Gibraltar that, at long last, our 31-year struggle to have our right to our land recognized is making headway.

Last year, I informed the Committee that the celebrations for Gibraltar's National Day had produced an explosion of sentiment by a people that had come of age, expressing the kind of feeling seen in other parts of the world in the process of decolonization. They say a picture speaks louder than a thousand words. When members watch the videotapes of National Day 1994, which I am providing, they will immediately recognize what has been, for those who have experienced the emergence from colonialism, a part of their own history.

If a visiting mission of the Special Committee were to join us in our celebrations this coming September, no doubts would remain in their minds about the authenticity of our separate identity as a people. So I say, "Come to Gibraltar and share our National Day with us". Those who do will doubt no longer. All those who joined us in 1994 — leading politicians from the United Kingdom, Spain, Portugal, Latin America and Holland — were convinced by what they saw and have given their support to our cause.

What we are seeing in Gibraltar can be described in the words of resolution 1514 (XV), which recognizes that "the peoples of the world ardently desire the end of colonialism" *(sixth preambular paragraph)*. It is also, in the words of resolution 1541 (XV), Principle II of the Annex, an example of a dynamic state of evolution and progress towards self-government. These two key resolutions have governed the decolonization process since its inception.

In addition to developing our case internally, we have taken it abroad — not just before the Fourth Committee and the Special Committee; but also to Geneva, to the monitoring Committee on the International Covenant on Economic, Social and Cultural Rights; to the administering Power; to the launching of the Conference on Dependent Territories; and to our neighbour, the Kingdom of Spain.

In the last year, I have addressed seminars at the Law Faculty of the University of Granada; in Seville, where I spoke to an organization that represents the leaders of the business community in the adjoining province of Andalucia; and in Madrid, where I addressed a national organization called Club Siglo XXI, which represents a cross-section of intellectuals from different spheres of life of the Kingdom of Spain. On all those occasions, I attempted to demonstrate to opinion-makers in that neighbouring country not only the unstoppable drive of the Gibraltarians for recognition of our right to self-determination and for our country's decolonization, but also our desire to live in harmony and cooperation with the Kingdom of Spain.

The increasing awareness of the reality of the cultural identity and separate reality of our people is now gaining ground in Spain and modifying its attitudes towards Gibraltar. Regrettably, although this is happening in society, there is no reflection of it in official circles, where all our efforts to promote the cause of decolonization and to participate in the eradication of colonialism by the year 2000, internally and externally, have produced increasing hostility from the Government. They see the efforts of my Government, on behalf of my people, as a threat to their objective of annexing Gibraltar and incorporating it under Spanish sovereignty.

No other Government of any other colonial Territory has put as much effort into achieving the right to decolonization as we have since 1992. It is also true that no other colonial Territory today faces as difficult a task in securing self-determination. To meet our aspirations and this Committee's objective of eradicating colonialism by the year 2000, we will need the Committee's help.

I wish to turn now to relations with the administering Power. The Gibraltar Constitution, like that of most British colonies, basically divides political responsibility between the territorial Government for most domestic policies and the administering Power for foreign relations. In Gibraltar's case, this has produced unforeseen repercussions in respect of European Union obligations, which apply to Gibraltar as the only colony to join the then European Community in 1973, with the United Kingdom.

To accept the view that matters arising out of our membership of the European Union are foreign affairs would represent a totally regressive step in constitutional terms, whittling away at the list of domestic matters and providing the effect of recolonization, contrary to the provisions of Article 73 *b* of the Charter, which requires the United Kingdom to develop the self-government of the Territory.

Following the last general election, at the formal opening of the seventh House of Assembly of Gibraltar, on 15 February 1992, the Governor of Gibraltar said:

> "The Government is conducting a review of the Gibraltar Constitution Order 1969 with a view to proposing changes to bring it up to date and to reflect developments over the past 20 years in the relationship between Her Majesty's Government in the United Kingdom and the Gibraltar Government, as well as the evolution of the European Community (EC). The Gibraltar Government will seek to initiate early discussions of this complex subject with Her Majesty's Government".

The complexity of the subject is such that there has been a continuous exercise since 1992 which has not yet been finalized. The United Kingdom Government itself has recognized the difficulties. At the Dependent Territories Conference of November 1993, the Secretary of State described the situation of Gibraltar

> "as a particularly difficult one because of this relationship with the EU".

Although a broad measure of agreement was achieved in 1993 as to the demarcation between the administering Power and ourselves in the area of transposing European Union obligations into the national law of Gibraltar, there are still unresolved questions which need to be finalized.

My Government none the less believes it is possible to achieve a mutually acceptable balance which will protect the position of the United Kingdom in respect of its responsibility for Gibraltar in the European Union and, at the same time, safeguard the autonomy of my Government without undermining our constitutional prerogatives.

It is clear that Spanish membership in the European Union since 1986 has been a relevant factor in further complicating matters. We do not underestimate the difficulties faced by the administering Power in adequately protecting our interests, faced as it is with constant pressure within the European Union from Spain. Understanding these difficulties, however, cannot prevent us from pressing them to stand up for our rights, as they are required to do under Article 73 of the Charter.

I know that the main complaint about me in London is that I am too single-minded in putting Gibraltar and its people first in my dealings with the administering Power. I have acknowledged that this is the case but make no apologies for it. It is the job which my people have elected me to do.

The position of the Spanish Government is unashamedly to make use of every opportunity within the European Union to bring pressure to bear on the United Kingdom, and through the United Kingdom on us. The objective is to limit the development of the national consciousness of the Gibraltarian people and its drive for self-determination and decolonization, in flagrant breach of the Kingdom of Spain's responsibility under the United Nations Charter and the relevant Covenant on Human Rights, of which Spain is a State signatory and whose validity has been extended without qualification to the territory of Gibraltar.

I would remind the Committee that when Spain objected to the inclusion of the Spanish enclaves of Ceuta and Melilla in the list of Non-Self-Governing Territories and refused to make them subject to the reporting requirements of the United Nations to this Committee, it did so precisely by stating that they did not have a separate identity. The Spanish argument is that the dispute with Morocco is a territorial dispute over Spanish cities. Spain argues that the geography of their location does not make them colonies. The fact that they are integrated within the Spanish nation-State, that the citizens of those cities share an identical status with those of the Spanish mainland, that the national laws of Spain apply without distinction as they do in the rest of the national territory — all these things mean that these are not Non-Self-Governing Territories.

By contrast, Spain has always accepted that Article 73 of the Charter applies to the people and the territory of Gibraltar. Principle IV of the annex to resolution 1541 (XV) states,

> "*Prima facie* there is an obligation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it." (*resolution 1541 (XV), annex, Principle IV*)

This makes us a people in our own right. We are not foreign expatriates living in the south of Spain, as they continue to describe us. We have a right to our land, and we are determined to defend that right.

Although there can be no doubt that under international law Gibraltar and its people are an entity distinct from the country administering it, the Spanish Government continues to act as if this were not the case. They oppose Gibraltar's sporting associations' taking part in international events. They refuse to recognize the Royal Gibraltar Police's membership in Interpol. Their enforcement agencies will often not cooperate with the Gibraltar judicial system. They will not recognize identity documents issued by my Government, contrary to European Union obligations. Finally, they will not even allow our dogs to enter international dog shows.

This behaviour, which my Government condemns, is contrary to the spirit of the Charter of the United Nations. It is contrary to resolution 2131 (XX) of 21 December 1965 and resolution 2625 (XXV) of 24 October 1970, which call on Member countries not to apply any form of pressure on the Non-Self-Governing Territories to deter them from pursuing their right to self-determination.

Spain has made no secret of the fact that my appearances before this Committee, my submissions to the Fourth Committee, my address to the Geneva Committee established under the Covenant on Human Rights, my participation in the meeting of the International Monetary Fund (IMF) as part of the United Kingdom delegation and all the attempts of my Government to promote the national identity of my people in accordance with United Nations resolutions are seen as acts hostile to the Spanish nation.

We Gibraltarians cannot be denied our right to decolonization. The disagreement between the Kingdom of Spain and the United Kingdom over Gibraltar, whose existence was acknowledged by this Committee in 1964, was never intended — nor could it be intended — to be a pronouncement of a doctrine depriving Gibraltarians of the right to self-determination. My Government, whilst defending that right, has always sought to make clear that the demand for recognition of our right as a people is not an act of hostility towards our neighbour.

Last October the representative of Germany addressed the Fourth Committee on behalf of the European Union. He said,

> "The European Union confirms its support for the principle of self-determination and for actions consistent with the Charter aimed at the elimination of colonialism, irrespective of the geographical location and population size of the remaining Non-Self-Governing Territories."

I have already mentioned that we are members of the European Union and that our membership in the Union is affecting the colonial relationship between us and the administering Power in the ways I have described. As we are citizens of the Union, the statement I have just quoted by the German presidency is a statement made in our name as well. He then went on to say, with reference to the text provided by the Special Committee,

> "This text is based mainly on the premise that all the Non-Self-Governing Territories have failed to exercise their right to self-determination solely because this right is denied to them by the administering Power".

It is ironic that this statement should be made in the name of the Gibraltarians, who are citizens of the Union, when it applies specifically to the Gibraltarians who are being discriminated against in this way by being denied the right of self-determination by the administering Power because of a Treaty dating from 1713.

Gibraltar is the only British colony in this situation. The right to self-determination is not denied them because of Spain's claim over the territory. There is also a territorial claim by Argentina over the Falkland Islands. In spite of this, the 1985 Constitution granted to the Islands enshrines the inalienable right to self-determination. The only argument used by the United Kingdom in our case is based on the Treaty of Utrecht of 1713.

That argument sometimes filters through in not very noticeable ways. For example, the United Kingdom statement of October 1994 to the Fourth Committee, which referred to the report of this Special Committee, said:

> "Within the constraints of treaty obligations we welcomed the acknowledgement that it is ultimately for the people of the Non-Self-Governing Territory to decide their future status."

The phrase "within the constraints of treaty obligations" was a reference to Gibraltar, although it was not named. Can the United Kingdom honestly argue that there is a constraint arising out of treaty obligations which prevents the same treatment of Gibraltar that is considered by the United Kingdom to be the correct treatment for every other colonial territory?

What is this Treaty that we are talking about? Is it a Treaty that has been signed in the last few years? Is it a Treaty that has something to do with the creation of the European Union? Is it a Treaty that has something to do with contemporary international law? No. It is a Treaty that was signed in 1713. The operative paragraph is article X of the Treaty of Peace and Friendship between Great Britain and Spain signed at Utrecht on the 13 July 1713. Article X contains the reference to what is to happen to Gibraltar in the future where it says:

> "And in case it shall hereafter seem meet to the Crown of *Great Britain* to grant, sell, or by any means to alienate therefrom the Propriety of the said Town of *Gibraltar*, it is hereby agreed and concluded, that the Preference of having the same shall always be given to the Crown of Spain *before* any others." *(Treaty of Utrecht, article X)*

But Article X also lays the following condition:

> "And her *Britannick* Majesty at the request of the Catholick King, does consent and agree, that no Leave shall be given, under any pretence whatsoever, either to *Jews* or *Moors*, to reside or have their Dwellings in the said Town of *Gibraltar*." *(ibid.)*

That condition has not been observed. Nobody would argue that it should be. It is clearly a flagrant violation of human rights contrary to the Charter of the United Nations and of the Declarations of human rights. But is this a treaty obligation which constrains the United Kingdom, as the administering Power, and requires it to discriminate in Gibraltar among Christians, Jews and Muslims? Now, if this particular violation of human rights is not sustainable, how can it be argued that the reversionary provisions in that same article, which also constitute a violation of the human right to self-determination of the people of the Non-Self-Governing Territory is still valid and can be sustained? That is the Treaty of which we are talking.

In 1995, this is what deprives my people of their fundamental rights under the Charter of the United Nations. It is, I submit, an insult to anybody's intelligence to expect this argument to be taken seriously. Yet, that is what is expected.

Others have questioned the legitimacy of the argument. I will quote from a book produced in 1983 by Howard S. Levie entitled *The Status of Gibraltar*. Professor Levie is the Emeritus Professor in International Law at the St. Louis University Law School. Commenting on the Treaty he says:

> "Spain appears to take the position that, unlike other treaties or agreements of past centuries which created colonial situations ... there is something sacrosanct about the Treaty of Utrecht."

After analyzing the situation, he comes to this conclusion:

> "How the colonial situation on Gibraltar differs from that which existed for [four other] former colonies has never been adequately explained."

In November 1988, during its thirty-fourth session, the Human Rights Committee pointed out that the International Covenant on Civil and Political Rights was opened for signature in 1976 and that both Spain and the United Kingdom had become parties to it. Under the Covenant, both countries therefore had to promote self-determination in the remaining dependent Territories. The United Kingdom was told in 1988 that the choice in the case of Gibraltar could not be limited to remaining a colony or becoming Spanish because of the Treaty of Utrecht.

Following this up, when I presented my case in Geneva last November to the United Nations Committee that monitors the sister 1976 International Covenant on Economic, Social and Cultural Rights, I reminded it of the contents of article I of the Covenant. The United Kingdom extended that Covenant to Gibraltar without qualification in 1976. We did not tell them to do it. We did not force them to do it. They did it freely and voluntarily. Article I, paragraph 3, says:

> "The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

These are mandatory provisions. This is international law. This does not say that the United Kingdom may act, if it feels like it and if it is not going to cause any problems. It says that it shall do so. It says that it shall] romote, not that it shall deny. How far can you get from] omoting something? You are going to the opposite pole i you are denying it. It is equally mandatory on the K ngdom of Spain, which also signed without entering a reservation on Gibraltar.

The response of the Committee last year was very encouraging. I believe this Committee may not have had this brought to its attention by the administering Power, since it is not reflected in the Secretariat working paper. One of the members of the Committee, a German professor of international law, asked the British representative:

> "My question is very blunt and simple. Does the United Kingdom consider that in 1994, that is about 290 years after the conclusion of the Treaty of Utrecht, the answer you gave is still sufficient? I mean the answer you gave as regards Gibraltar, that any changes to its status must take account of the provisions of the Treaty of Utrecht? We have a Treaty of 1713 and unless Spain agrees to self-determination, there are no options for Gibraltar. I wonder whether this is still the case?"

The British delegation replied — somewhat lamely, I think — as follows:

> "I can only say that the view that is taken by the United Kingdom Government and by the Spanish Government is that that particular provision of the Treaty of Utrecht is still operative and still binding, and does present an inhibition on Gibraltar proceeding to independence, not to self-rule."

Does this mean that the Gibraltarians can exercise self- determination provided the choice is between integration, free association or the fourth option recognized by the United Nations? And that, in that case, it is purely a matter between us and the administering Power in which Spain has no say, and that this view is shared by Spain? The result of those deliberations was that the Committee in its final report included for the first time a comment on Gibraltar which I believe the Special Committee needs to take into account:

> "The Committee notes the concern expressed to it about the situation of Gibraltar in relation to the right to self-determination recognized in article 1 of the Covenant and calls upon all parties to the existing situation to ensure full respect for all the rights recognized in the Covenant in relation to future developments concerning Gibraltar." (*E/1995/22, para. 272*)

I think that has been the most encouraging response we have had from an organ of the United Nations.

Also in November 1994, a similar conclusion was reached in a paper prepared by Fordham University. After an exhaustive research of the legal issues, the author, Simon J. Lincoln, comes to the conclusion that the people of Gibraltar have the right to self-determination. He urged the United Nations to disregard the anachronistic reversionary provisions of the Treaty of Utrecht and recognize Gibraltar's fundamental right. I myself published a paper in the *International Law Journal* in May this year, presenting the arguments with which this Committee is familiar. I will be circulating copies to the Committee.

There are in fact three versions, not one, of the effect of the Treaty of Utrecht on the process of decolonization in the case of Gibraltar. One version — the one that the article in the *International Law Journal* refutes — is the view held by the Kingdom of Spain. The Spanish position is that a strict interpretation of the letter of article X of the Treaty of Utrecht prevents the exercise of any choice whatsoever on the part of the inhabitants of the colony. According to this, the wishes of the people of Gibraltar are irrelevant. The view of the Kingdom of Spain is that Gibraltar is to remain a British colony until it is taken over by Spain. From our perspective, what Spain is saying is that Gibraltar cannot be decolonized; that the only thing that can happen to Gibraltar is that it can have a change of administering Powers, with the Kingdom of Spain replacing the United Kingdom as the administering Power. The proposals made by the Spanish Government to the British Government in Geneva in 1985 were effectively that the present colonial constitution would remain, with the Kingdom of Spain being substituted for the United Kingdom.

I think the Committee would agree that one could describe this interpretation as being the hard-line option, representing the toughest anti-self-government position and the strongest denial of the provisions of the Charter, the Covenants on human rights and the resolutions of the United Nations. The Kingdom of Spain claims that this view is shared by the United Kingdom.

The most recent occasion on which the Spanish position was reaffirmed was last week at a seminar held in Madrid, where Mr. Spiteri, the Spanish Government representative attending the Seminar, said that we Gibraltarians should be reminded that our birth certificate reads "Utrecht". I put it to this Committee that our birth certificate reads "Chapter XI of the United Nations Charter", which is the same birth certificate that every colonial people had and which gave rise to the international recognition of the rights of colonial peoples.

The second version is the one that is reflected in the answer given by the United Kingdom delegation in 1988 to the Monitoring Committee on the Covenant on Civil and Political Rights which I have already quoted. That second version was repeated on 19 April this year in the House of Lords in answer to a Parliamentary question. Baroness Chalker, in reply, set out the British Government's position on Gibraltar:

> "Our policy has consistently been that, while we support the principle of the right of self-determination reflecting the wishes of the people concerned, it must be exercised with other principles and rights in the United Nations Charter as well as other Treaty obligations. In the case of Gibraltar, the right of self-determination is circumscribed by the Treaty of Utrecht."

This second version, instead of eliminating self-determination, circumscribes it. What it seems to be saying is that it reduces the options and the choices available to Gibraltarians but does not deprive us of any choice whatsoever.

There is a third position which is even better. When Douglas Hurd, the Secretary of State, addressed the Dependent Territories Conference organized jointly by the Falkland Islands and ourselves in London in November 1993, he said when he came to the subject of Gibraltar:

> "Secondly, and perhaps less obviously, independence is not a practical option for Gibraltar without the consent of its neighbour. It does not therefore have unfettered scope to choose its own status."

Scope of choice is not the same thing as legal right. And therefore, here we have a definition which is not tied to the Treaty of Utrecht. If there were no Treaty, does the possibility of a large hostile neighbour not create a limitation on the scope of exercising unfettered choice, notwithstanding our legal rights? Was it not the case that Belize, for many years, failed to exercise its right to self-determination and independence because of the constraint created by a territorial claim from neighbouring Guatemala? Is it not the case that the Falkland Islanders may feel constrained by a claim from Argentina in exercising self-determination, even though in their case the United Kingdom has repeatedly stated that they are entitled to this and indeed enshrined it in their Constitution in 1985?

In paragraph 2 of resolution 46/181, declaring the International Decade for the Eradication of Colonialism, the General Assembly declared

> "that the ultimate goal of International Decade for the Eradication of Colonialism is the free exercise of the right to self-determination by the peoples of each and every remaining Non-Self-Governing Territory in accordance with resolution 1514 (XV) and all other relevant resolutions and decisions adopted by the General Assembly". *(resolution 46/181, para. 2)*

If we are one of the Territories included in the reference to "each and every remaining... Territory", is this not a refutation of the arguments of the Treaty of Utrecht?

Since 1992 I have limited my annual presentation to providing this Committee with the views of my Government and a summary of the activities we have undertaken to advance our own decolonization. This year I am going one step further.

At the Trinidad conference, in which I participated at the Committee's invitation, we considered jointly, with members of this Committee, the options open to the 17 remaining Non-Self-Governing Territories. It appears to me axiomatic that my participation in the Seminar was based on the premise that Gibraltar had options. The point that I have made today and the point that I made at the Seminar is that the most powerful and positive contribution that the Special Committee can make in Gibraltar's case, if we are genuinely to progress to decolonization before the end of the decade, is to express a view on the constraints, if any, on the Treaty of Utrecht. I made it clear at the Seminar in Trinidad and Tobago that in my submission this week I would be making a formal request for the Committee to give consideration to this issue. The Seminar, in its final

report, has suggested that the Committee should take this request on board and give it consideration.

I believe that if the Committee is asking my Government and my people to consider the options for decolonization open to them so that they can exercise self-determination in choosing between those options between now and the year 2000, then we need to know what this Committee believes those options are. If the Committee feels that, as far as its terms of reference are concerned, it has to be guided by the Charter of the United Nations, the Covenants on Human Rights and resolutions 1514 (XV) and 1541 (XV), among others, and not by any consideration of the Treaty of Utrecht, then it is important for us to know that.

If the Committee feels that it cannot express a view one way or the other on the Treaty of Utrecht, then we would wish to have an indication from the Committee as to what the appropriate forum is within the United Nations system to make a ruling on this matter. Obviously, if the Spanish interpretation of the Treaty of Utrecht were valid, then, as I have demonstrated, we would in effect be saying that it is impossible to decolonize Gibraltar. If that is indeed the case, then it seems to me that there is little point in retaining it on the list of Non-Self-Governing Territories requiring eventual decolonization, since such a result is impossible because of the Treaty of Utrecht.

Needless to say, we are totally convinced that this interpretation cannot be correct. My Government is of the firm conviction that the case we have presented is irrefutable. We have marshalled our arguments in the earnest belief that this Committee could not possibly accept that it had to take account of the terms of the 300-year-old Treaty in addressing its responsibilities *vis-à-vis* Gibraltar and its people.

I put it to the Committee that what I am asking it to do in expressing a view on the relevance of the Treaty of Utrecht is no more than what it is required to do by its mandate in respect of the implementation of the International Decade for the Eradication of Colonialism. A report by the Secretary-General submitted to the General Assembly at its forty-sixth session, in November 1991, states,

> "The international community should seek to enable the peoples of Non-Self-Governing Territories to exercise their inalienable right to self-determination and decide their future political status with complete knowledge and awareness of the full range of political options available to them, including independence." *(A/46/634/Rev.1, annex, para. 4)*

I started off by making a reference to this year's fiftieth anniversary celebrations. When I took part in the celebrations in the United Kingdom, the Prime Minister of that country reminded us all that at the founding of the United Nations, Winston Churchill had said:

> "We must make sure that the world Organization does not become an idle name, does not become a shield for the strong and a mockery for the weak".

That is what we expect of the United Nations, and I would add that we have no doubt that there is a shield for the weak in the decolonization process: this Committee is that shield.

The Chairman: On behalf of the Committee, I wish to thank the Honourable Joe Bossano, Chief Minister of Gibraltar, for the information he has furnished to the Committee and for the formal requests he has made. Does any member wish to make comments or put questions to the Honourable Chief Minister?

Mr. Viswanathan (India): I wish to join the Chairman in thanking the Chief Minister for his graceful presence in the midst of our Committee. I also want to thank him for the invitation he extended to the Committee to visit Gibraltar. We are all familiar with his articulately expressed views, which are clear and consistent.

Mr. Bossano withdrew.

At the invitation of the Chairman, Ms. Christina Thorsell (International Federation of Liberal and Radical Youth) took a place at the Committee Table.

The Chairman: I call on Ms. Thorsell.

Ms. Thorsell (International Federation of Liberal and Radical Youth (IFLRY)): As the Secretary-General of the International Federation of Liberal and Radical Youth (IFLRY), and therefore on behalf of young liberals from all around the world, I am very grateful to this Committee for allowing me to speak on the Gibraltar issue, which is of essential importance to us.

IFLRY is an international non-governmental organization which is the forum for the youth organizations of liberal political parties all over the world

and, as such, is a full member of the Liberal International. Our member organizations are situated around the centre of the ideological scale, our main principles being the promotion of civil society, individual human and civil rights, the collective rights of minorities and other endangered peoples and the achievement of peace and security on the basis of sustainable development, environmental protection and free-market economy.

IFLRY has about 60 member organizations in 45 countries on all 5 continents. Today I am representing more than a million young liberals all over the world. We are active members of all the international structures existing in the field of youth cooperation. IFLRY has a consultative status within the relevant United Nations and United Nations Educational, Scientific and Cultural Organization (UNESCO) frameworks. As a political non-governmental organization, we are active in observing troublesome electoral processes, campaigning for political and civil rights where necessary and supporting those causes that we consider fair in international politics.

In the past five years we have thoroughly studied the Gibraltar case. In 1991 our General Assembly first adopted a resolution aiming at the recognition of the Gibraltarian people's national rights. We have twice sent delegates and members of our Bureau to visit the country, and in 1993 our General Assembly adopted a comprehensive resolution on Gibraltar which makes up our current policy on the issue. That resolution is available at the conference centre, and I would very much recommend that members read it. Furthermore, in May this year our Executive Committee unanimously welcomed the Gibraltar National Liberal Youth (GNLY), the youth organization of the Gibraltar National Party, which is an opposition party within the country, as a member of our international family.

I must stress that this deep commitment to the rights of the Gibraltarians has always enjoyed the strongest support of all of our British and Spanish member organizations. It is especially important to show the change of mind on the issue among an important sector of the young generation in Spain.

Liberalism is the ideology which primarily seeks to establish freedom: freedom for the achievement of individual and collective self-determination and freedom to decide which path to take and which to refuse. Ours is a freedom which accepts no borders. I, as a Swede, cannot be free while other human beings are deprived of a freedom so essential as that of democratically deciding on their country's national identity and political status. This freedom is a basic human right that young liberals around the world pursue for themselves, for every human being and for every people, including, of course, the people of Gibraltar.

We liberals believe that the rights of a colonial people are paramount and override any treaty existing between other parties. Sovereignty is exercised on behalf of, and for the good of, the colonial people to whom it ultimately belongs. In the case of Gibraltar, the excuse being used by the United Kingdom, under pressure from Spain, to refuse recognition of the Gibraltarian nation's right to self-determination is simply unacceptable. How can a Treaty dating back to 1713, before the relevant people even existed, be used three centuries later to undermine that people's very fundamental right to a fair decolonization achieved through a democratic process of self-determination? We strongly reject this, and we condemn the Governments of the United Kingdom and the Kingdom of Spain for their lack of respect for the democratic wishes and the essential rights of Gibraltar.

When IFLRY visited Gibraltar on the occasion of the country's National Day last year, we were deeply moved by the sentiments of a small nation which is twice colonized and for which the international community does not seem to do anything. The Chairman and the members of the Special Committee can do something about this. I ask the Committee to bear in mind that it is responsible for the well-being of the Gibraltarian people and for ensuring their political emancipation, which, of course, cannot be achieved by dissolving Gibraltar into Spain.

We have followed the United Nations action in the past few years, and I must admit that we are saddened by the Special Committee's lack of initiative in the most difficult case it has before it. Gibraltar might be the most difficult case before it, but it is also the case where the Committee is most needed by a people that is simply endangered and asking for help.

Gibraltar today is the only real colony — or, if I may put it this way, the only really colonized colony. Colonialism still prevails in Gibraltar in its most brutal shape: it makes the colony a simple property for others to bargain with. With due respect, I find it very difficult to understand why this Committee has not visited the country, and on behalf of my organization, I strongly encourage the Committee to do so, whether the current colonial Power and the aspiring colonial Power like it or not, because that is the only way the Committee can really fulfil its task and obtain first-hand information on

what Gibraltar is today, who the Gibraltarians are and what they wish. Otherwise, the Special Committee would simply be neglecting the Gibraltar issue.

When the Committee visits Gibraltar, it will see a country that needs it in order to survive as a political entity. It will find a Mediterranean people who have come of age, who are conscious of their rights and who are determined to defend their past, their present and their future.

The young liberals of the world and, in fact, every true democrat will be watching the Committee's action on this issue and will keep on lobbying the international community. This is the time for the Committee to act. The Committee's mandate from the General Assembly is very clear: to decolonize colonized areas. The United Nations, as an Organization, has seldom been as strong as it is today, in 1995. This is a chance for the Committee to act in the interest of democracy. Please do not let a small country's right to self-determination fall into the shadows of larger interests. We trust in the Committee's commitment to its task, and we wish it success in accomplishing it for the good of the Gibraltarian people.

The petitioner withdrew.

The Chairman: I call on the representative of Spain.

Mr. Pérez-Griffo (Spain) (*interpretation from Spanish*): My delegation wishes to thank you, Mr. Chairman, and the other members of the Committee for approving the Spanish delegation's request to participate in this debate.

We have studied the Secretariat's working paper (A/AC.109/2025) on the question of Gibraltar. Once again, because it does not include most of the information provided by my country, a reading of it may lead to an incomplete view or even a biased interpretation of the decolonization process and the real situation of the colony.

General Assembly resolution 1514 (XV), the cornerstone of the process of decolonization, established the compatibility that is necessary between the principle of self-determination of peoples and the principle of territorial integrity. Paragraph 6 states:

> "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations." *(resolution 1514 (XV), para. 6)*

In conformity with this paragraph, successive resolutions of the General Assembly have established the doctrine whereby the decolonization of Gibraltar is not, as is asserted, a question of self-determination but, rather, a question of the restoration of the territorial integrity of a State — in this case, Spain. In this respect, General Assembly resolution 2353 (XXII) established the applicability of that principle in the case of Gibraltar, and General Assembly resolution 2429 (XXIII) requested the administering Power to put an end to the colonial situation of Gibraltar and declared that its continuation would be incompatible with the United Nations Charter.

Consequently, according to the doctrine established by the United Nations, the decolonization of Gibraltar must be resolved through negotiations between Spain and the United Kingdom, taking due account of the interests of the population of the colony.

The current process of negotiation between Spain and the United Kingdom emerged following the bilateral Declaration of Brussels of 27 November 1984, which established that, in this process, questions of sovereignty, as well as cooperation for mutual benefit in relation to the future of Gibraltar, would be addressed.

The local authorities of Gibraltar were involved in this process until Mr. Bossano came into office as Chief Minister in 1988. Spain and the United Kingdom have always regretted this self-marginalization. An ever-increasing number of voices in Gibraltar have urged the local authorities to join in the current negotiating process and to renounce the sterile policy of confrontation.

The most recent ministerial meeting in the process initiated in Brussels took place in London on 20 December last with an encounter between the Foreign Minister of Spain and the Foreign Secretary of the United Kingdom. The Ministers reaffirmed their commitment to the Brussels process, demonstrated their agreement on the importance of Gibraltar's having a viable economy, recognized the existence of a problem of smuggling, particularly in drugs, in the Gibraltar area and agreed on the need to establish an effective mechanism, involving the competent local authorities, to improve consultations and cooperation.

Within the framework of that mechanism a Spanish-British working group met, with the participation of the

local authorities. However, very little was achieved, owing mainly to the insufficiency of cooperation from the local authorities of the colony. The situation in this respect is very serious. A great deal of Gibraltar's income is derived from smuggling. More than 200 high-speed launches based in the port of Gibraltar — where they find a safe haven for their operations — indiscriminately bring contraband tobacco and drugs into Spanish territory.

The economic importance of this illicit trafficking, which continues at an increasing pace, is reflected in the following data: in 1993 tobacco smuggling represented, in conservative terms, nearly 20 per cent of the colony's gross domestic product, and in 1995 the value of drugs brought into Spain from Gibraltar without being seized exceeded 200 billion pesetas, which is equivalent to $1.6 billion.

The earnings from this trafficking are laundered in the colony, thanks to the facilities deriving from its peculiar financial system. The smokescreen behind which more than 50,000 companies registered in the colony operate causes a further deterioration in the situation.

I should like to point out that on 7 July last various measures were taken in Gibraltar to restrict certain illicit activities of vessels that are regularly used for drug trafficking. Spain welcomes these initial measures and hope that their strict implementation will be followed by other provisions for the eradication of all types of illicit trafficking in and from Gibraltar.

The Government of Spain is firmly resolved to continue to seek a negotiated solution that will put an end to the dispute over Gibraltar. However, the increase in smuggling from the colony is a new obstacle to the achievement of that goal. Spain desires the prosperity of the people of Gibraltar, but the colony's economy cannot operate on a basis of vice and at the expense of the neighbouring Spanish territory.

Although compliance with United Nations doctrines in respect of Gibraltar does not concern the principle of self-determination but, rather, is a question of territorial integrity, Spain believes that in the process of the decolonization of the territory the legitimate interests of the population and its own characteristics must be taken into account within a broad framework of autonomy.

Spain remains strongly committed to dialogue, and the Spanish Government is fully prepared for all these aspects to be fully guaranteed in a definitive negotiated solution to this dispute, in accordance with the resolutions of the General Assembly.

Today, certain statements have been made before the Committee. I wish, on behalf of my Government, to express a reservation about the position of Spain in this respect, and we reserve the right to bring before the Committee in due time whatever further detail and comments might be considered appropriate.

The Chairman: As there are no further speakers, and taking into account the related developments, I suggest that the Committee continue consideration of this question at its next session, subject to any directives that the General Assembly might give at its fiftieth session and that, to facilitate the Fourth Committee's consideration of the item, the Committee transmit to the General Assembly all related documentation.

It was so decided.

The Chairman: The Committee has thus concluded its consideration of the item on Gibraltar.

Question of East Timor (A/AC.109/2026)

The Chairman: I wish to inform members that a delegation of Sao Tome and Principe, also on behalf of Angola, Cape Verde, Guinea-Bissau and Mozambique, has requested permission to participate in the proceedings of the Special Committee's consideration of the question of East Timor.

If I hear no objection, may I take it that the Committee accedes to this request?

It was so decided.

The Chairman: I wish to draw members' attention to a working paper prepared by the Secretariat (A/AC./109/2026). I also wish to draws members' attention to *aide-mémoire* 5/95/Add.2, containing requests for hearing.

In accordance with the decisions taken at the 1442nd and at this meeting, the Committee will now hear the petitioners whose requests for hearing we have granted.

At the invitation of the Chairman, Mr. Zacarias da Costa (Timorese Democratic Union) took at place at the petitioners' table.

The Chairman: I call on Mr. da Costa.

Mr. da Costa (Timorese Democratic Union (UDT)): As we mark the twentieth anniversary of the Indonesian invasion of East Timor, we are present here once again to petition the members of this Committee to condemn the Indonesian Government's continuing unlawful occupation of the Territory and to reaffirm the inalienable right of the Timorese people to the free exercise of self-determination.

As members will recall, four members of the Timorese Democratic Union (UDT), including Mr. Domingos Oliveira its General Secretary, appeared before this Committee for the first time in 1987 to denounce false claims by the Indonesian Government that the Timorese people had actively sought integration through the signing of the Balibo declaration. I wish to stress that Mr. Oliveira and other Timorese were forced at gunpoint to sign that declaration, which has since been used by the Indonesian Government, together with other fabrications, to justify their continuing presence in the Territory.

Successive representations of the Government of Indonesia have appeared before this Committee and have argued that we, the East Timorese, have exercised our right to self-determination by choosing integration with Indonesia. The Indonesian Government continues to assert this in spite of numerous United Nations resolutions condemning the forced occupation of the Territory and the human rights violations perpetrated by the Indonesian military. It asserts this in spite of growing opposition by their own constituents, who condemn and denounce their own Government's shameful aggression against the East Timorese people, which the Indonesian people themselves interpret as being an affront to their nation's constitution. And it continues to assert this in spite of the visible opposition by the East Timorese, who demand a free act of self-determination by fearlessly voicing their discontent within the Territory and by mounting direct challenges to the Government of Jakarta within Indonesia's own capital.

In terms of international law, the legal and political situation in East Timor has been clearly defined since 1960. I would refer to resolution 1542 (XV) and subsequent resolutions adopted since the Indonesian invasion, including the most recent, the International Court of Justice ruling on the Timor Gap Treaty, which cites East Timor as a Non-Self-Governing Territory. It is important to highlight, nevertheless, that resolution 1542 (XV) was approved within a political framework totally different from that of subsequent resolutions. The first resolution was the fruit of the process of decolonization, which was initiated after the Second World War, while the following ones were the product of an expression of solidarity by the international community with the East Timorese people, who have fallen prey to the neo-colonialist policies of the Indonesian State.

It is ironic to note that 40 years after the Bandung Conference and 35 years after the adoption of resolutions 1514 (XV) and 1541 (XV) by the General Assembly, Indonesia, which was one of the founders of the Non-Aligned Movement, is conducting itself today as a colonial Power over the East Timorese people. In stark contrast, Portugal, in conformity with resolution 1542 (XV) and in accordance with the new political will that surfaced after the Carnation Revolution, in 1974 initiated a decolonization process in the Territory, which was aborted by the Indonesian invasion. Consequently, Portugal has been prevented from fulfilling its duties and responsibilities as the internationally recognized administering Power of the Territory.

Thus, East Timor continues to be an issue that must concern the entire international community, not only in its relevance to international law but as a moral issue rooted in the fundamental rights of humankind. The question of East Timor cannot be dismissed simply as a dispute between the Governments of Portugal and Indonesia. The continuing violation of the East Timorese people's human rights is directly linked to the denial of our rights to self-determination and freely to determine our own future.

With respect to the International Decade for the Eradication of Colonialism, this Committee's Caribbean Regional Seminar on the Midterm Review of the Implementation of the Plan of Action, held at Port of Spain, Trinidad and Tobago, I should like to refer to paragraph 12 of its report, which mentioned that

> "the Seminar heard statements by representatives of Indonesia, Portugal and East Timor, who reaffirmed their commitment to continue their ongoing dialogue to find a just, comprehensive and internationally acceptable settlement to the East Timor issue with the assistance of the United Nations".

In this respect, I should like respectfully to remind the members of this Committee that the seminar, which it organized, approved a paragraph on East Timor, that I have been invited by the Chairman of the Committee and that the language inserted was approved by the United Nations.

At the same seminar, I mentioned that the *erga omnes* character of the rights of peoples to self-determination, as referred to by the International Court of Justice ruling on the Timor Gap Treaty, has been denied to the people of East Timor in all aspects of their lives. It also must be noted with concern that the policies developed by the Government of Jakarta are designed to ensure that this right is not exercised by the East Timorese people. The use of the military in the Territory is an example of this.

As stated at the seminar, the military presence in the Territory is used by the Indonesian Government as a tool of intimidation and oppression, and its presence is felt in all spheres of life. As a State tool, the military is also responsible for perpetrating and reinforcing State-organized violence, which has established an internalized fear in the population. As in most countries under foreign occupation and experiencing armed conflict, the women of East Timor are one of the most afflicted civilian groups as a result of the Indonesian occupation and military presence. The violation of women and the total disregard of their rights is used to instill fear and destroy the community's social cohesion. Women are prevented from earning a living for themselves and their children and are constantly harassed. Those who are raped by the soldiers become outcasts in their own communities and a source of shame for their families. Women have also become a valued commodity in the Territory, as they are forcibly traded for the lives and safety of male relatives who have been detained or targeted by the Indonesian authorities.

Although we welcome the round of talks held under the auspices of the Secretary-General and the support of the Governments of both Portugal and Indonesia for the intra-Timorese dialogue and its continuation, as discussed during the sixth round of talks, we note with concern that Indonesia has thus far failed to comply with the consensual statement, adopted at the last session of the Commission on Human Rights in March of this year, by facilitating a visit to the Territory by the High Commissioner on Human Rights.

We also note with concern that recommendations made by the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Bacre Waly Ndiaye, have yet to be implemented by the Indonesian Government. Of greater concern is the escalation of the human rights situation in the territory preceding Mr. Ndiaye's visit. I refer specifically to the night raids by the military-supported "ninjas", the killing of six Timorese in Liquiza and the arbitrary arrest and detention of Timorese civilians.

To conclude, I wish to echo the recommendations of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, particularly with reference to the demilitarization of the territory, respect for the cultural and political identity of the East Timorese and their fundamental human rights, and the reaffirmation of the East Timorese people's right to self-determination — lest we forget the images of the Santa Cruz massacre of 12 November 1992.

The petitioner withdrew.

The Chairman: I thank Mr. da Costa for adhering to the time-limit decided upon by the Bureau. In the same vein, I would appeal to all petitioners to adhere to the 15-minute time-limit.

At the invitation of the Chairman, Mr. David Webster (East Timor Alert Network) took a place at the Committee table.

The Chairman: I call on Mr. Webster.

Mr. Webster: I thank you, Mr. Chairman, for the opportunity to address the Committee today. My name is David Webster. I am a coordinator with the East Timor Alert Network (ETAN) in Toronto, which the United Nations has named as one of the most multicultural cities in the world. Our local ETAN group has hundreds of members and supporters from all regions of the world now living in Toronto.

The East Timor Alert Network is a national association of Canadians working for East Timor's right to self-determination. It was founded in 1987 by the Canadian Council of Churches and now has local groups from coast to coast in seven of the ten Canadian provinces.

The massive human rights violations in East Timor, a Territory that continues to struggle for its United Nations Charter right to self-determination, are no secret. They will be outlined by other presenters today better than I could do. However, I would like to open with the words of Isabel Galhos, who defected to Canada in 1994. Isabel is a young Timorese who grew up under the Indonesian military occupation of her homeland and was regarded as "a bright girl with a bright future" by Indonesian officials. The fact that she took the first available opportunity to leave East Timor and defect to Canada shows the failure of Indonesian efforts to integrate the new generation of Timorese.

Many East Timorese families are now forced to "adopt" two Indonesian soldiers as live-in guests. To quote Isabel Galhos:

> "They come at any time, use anything they want, eat and drink everything and never pay for anything. Everything's free. They really like to be adopted by a family that has a daughter. So besides eating, drinking, everything for free, they can also have sex without any responsibility. Me, my mom sent me to the nuns whenever the military came, which was almost every day. They come any time — 10 o'clock, 12 o'clock at night. They wake everybody up and say they're hungry, so we have to cook for them at that time. We are not free in East Timor, not even in our own homes."

Next month will mark 50 years since Indonesia's declaration of independence from the Netherlands, an event that inspired many of the other colonized peoples of the world. Indonesia had to fight for several years to gain the independence that was its inherent right. Forty years ago, Indonesian President Sukarno hosted the Bandung summit that launched the Non-Aligned Movement, another milestone on the path to decolonization.

But 20 years ago, the Government of Indonesia betrayed its anti-colonial history by invading a neighbouring country: East Timor. In the words of another East Timorese now living in Canada, Barnabé Barreto Soares:

> "Today, Indonesia has become a brutal colonizer itself. But many Indonesians do not want to be in East Timor. It is a shame that the Government of Indonesia keeps maintaining its position to be in East Timor. It violates the principles of its own Constitution."

Twenty years of illegal military occupation cannot be allowed to pass without concrete action by the international community. By the year 2000, East Timor must be well on the road to self-determination, or else the international community will have failed in its moral and legal obligations.

Canadians are very concerned about East Timor. This concern is growing today. To give one example, the General Synod of the Anglican Church of Canada, the highest decision-making body of that Church, passed a resolution on East Timor in June. The resolution expressed support for the Catholic and Protestant churches of East Timor "in their ongoing suffering" and spoke of the Indonesian Government's ongoing assault on East Timorese culture, language and religion. General Synod urged that strong expressions of concern be sent to the Government of Indonesia, that tripartite talks be held between Portugal, Indonesia and the Timorese resistance movement (NRM), and that no arms be sold to Indonesia until the East Timor situation was resolved. Similar support has come from the Catholic Church of Canada as well as from major Protestant denominations.

Canada's trade unions, too, are supporting East Timor more and more. To give one example, the Canadian Auto Workers Union, the largest industrial union in Canada, has called for one half of the overseas aid budget of the Canadian Government to be devoted to the promotion of human rights and asked that aid be tied to respect for East Timor's human rights and right to self-determination.

In this context, I should like to highlight a statement made two years ago on East Timor by the Canadian Labour Congress (CLC), the umbrella for all trade unions in Canada, representing 2.5 million workers. The CLC called upon the United Nations to

> "establish an effective human rights monitoring mechanism for East Timor and to take appropriate measures to ensure that the people of East Timor are freely able to exercise the fundamental right of self-determination.
>
> "While the Canadian Labour Congress agrees with the international community's consistent refusal to recognize the occupation of East Timor by Indonesia, we continue to be dismayed that Governments, including Canada, have continued to conduct business as usual with Indonesia."

The words echo those of the late Bishop of East Timor, Monsignor Martinho da Costa Lopes, who said:

> "I cannot understand why some nations willingly sacrifice the right of self-determination of East Timor in exchange for commerce."

Canada is a prime case of this phenomenon. In many cases, our diplomatic representatives have proved to be strong advocates of human rights in East Timor, a situation that we in the East Timor Alert Network are grateful for. But at the same time, the Government of Canada has identified Indonesia as a leading trade

partner. Vast government assistance has been extended to Canadian corporations looking to expand their operations in Indonesia. Indonesia has become our largest trading partner in South-East Asia.

Such Canadian corporations as the International Nickel Company, Bata Shoes and hundreds of others are providing succour to the Indonesian Government. Without the presence of foreign investors like these Canadian companies, the Indonesian Government would have difficulty meeting the targets of its current development plan. In a recent speech in Toronto, Indonesia's State Minister for Investment said that foreign private investment must double if Indonesia was to meet its goals. Plainly, the Indonesian Government is dependent on outside help.

Canada is a trading nation, but Canadians also understand that we should speak out and take action for a better and more peaceful world. While trade can be a powerful force for good, Canadians have also demonstrated through polls and submissions to the recent foreign policy review that we are a people who want our Government to project positive values. The same is true, I believe, for the people of other countries — including the people of Indonesia.

On East Timor, the Government of Indonesia has proved to be intransigent, repeatedly refusing the reasonable request for a referendum on self-determination. Countries that are confident of their position allow such referenda. Once again, Canada provides an example of this: the province of Quebec will vote on whether or not to become an independent country this year, despite the fact that Quebec joined Canada freely 125 years ago, helped to shape the modern State of Canada and has suffered few human rights violations. If Quebec may vote, why not East Timor, which is so clearly an occupied Territory?

With the Indonesian regime refusing to make meaningful changes on the basic issue of self-determination, the time for quiet diplomacy is past. Twenty years of occupation is more than the world should tolerate. The international community must act to ensure that East Timor is granted the right to choose its own future. One excellent path to follow would be that proposed by the National Council of Maubere Resistance of East Timor in its peace plan, reaffirmed on several occasions in the past few years.

The East Timor Alert Network calls on this Committee to recommend a strong resolution to the General Assembly this year. We further ask that the resolution call for an international embargo on the sale of weapons to Indonesia as long as it illegally occupies East Timor. Finally, a resolution should include the recognition that, in many cases, corporations have become larger players in the world scene than many nation States. Therefore, a resolution should call upon corporations as much as Governments to consider the right to self-determination of East Timor in their dealings with the Government of Indonesia.

At the invitation of the Chairman, Mr. Kan Akatani (Free East Timor Japan Coalition) took a place at the petitioners' table.

The Chairman: I call on Mr. Akatani.

Mr. Akatani (Free East Timor Japan Coalition): At the first All-Inclusive Intra-Timorese dialogue, held in Austria this past June, Mr. Guilherme Maria Gonçalves, the first Governor of East Timor under Indonesian rule, stated that he had repudiated the Balibo declaration. The statement is important, since Mr. Gonçalves is one of the six signatories of that declaration.

The Balibo declaration is what is usually referred to as the "integration declaration", which is said to have been signed by six leaders of four East Timorese political parties in Balibo on 30 November 1975, two days after the Frente Revolucionária de Timor Leste Independente (FRETILIN) declared independence in Dili.

Mr. Gonçalves is not the first among the signatories to repudiate the declaration. Mr. José Martins, president of the Kota Party, wrote in his report of April 1976 that the declaration was imposed by BAKIN, the Indonesian intelligence coordinating agency. He also wrote in the same report that the document was prepared inside Indonesian territory, more than 1,000 kilometres from East Timor. Mr. Domingos de Oliveira of the Timorese Democratic Union (UDT) categorically denied the validity of the declaration, saying that three of the signatories, himself included, were forced by Indonesia to sign it on the Island of Bali, on Indonesian territory. Finally, this Committee heard from UDT leader Mr. João Viegas Carrascalão, at its 1987 hearing, that the UDT had never asked Indonesia to intervene.

Indonesia, however, continues to this day to call this declaration "a manifestation of the genuine wish of the people of East Timor in general". A renowned Indonesian academic, Mr. George Aditjondro, pointed out that the Balibo declaration is one of the five historical

myths about East Timor propagated by the Indonesian Government: the myth that the majority of the people of East Timor desire integration. Mr. Aditjondro now stays abroad, refusing to obey the summons issued by the police of his homeland. It is widely believed that his published studies on East Timor have angered the Government, although the charges do not appear to include reference to them.

The declaration, though a myth, has been repeatedly mentioned in Indonesian official documents, statements, pamphlets, school textbooks, mass media and so on. However, little is known about the circumstances in which the declaration was drawn up and announced. There was no official ceremony of proclamation attended by supporters. There was no gathering of the four parties to adopt the declaration.

Legally speaking, the Balibo declaration is at best a statement by a part of the people of East Timor. The fact that some of the signatories were forced by Indonesia to sign and that the UDT had not given its approval as a party to the document inevitably further erodes its validity, even as such a statement.

I should like to submit to the Special Committee on Decolonization the result of my investigation into the Balibo declaration. What has become clear from my investigation is that Indonesia, by manipulating information or language — where Indonesian intelligence was at its best — appears to have tried to deceive both the East Timorese and the international community.

In particular, I should like to call the attention of the Committee to the English version of the declaration submitted by Indonesia to the Fourth Committee in December 1975. Then, I should like the Committee to compare this with an original English version published in Indonesia and the other original English version, transmitted to the Portuguese Government. These original English versions are a translation from the original Portuguese version.

The formal differences between the United Nations version and the other two original English versions are immediately noticeable. The Indonesian Government completely rewrote the declaration. It appears that the reason was not to present a neater English translation to the United Nations, because it is in no sense a translation of the Portuguese version, but to remove problematic sections of the original English version that otherwise would have invited speculation about the circumstances in which the declaration was drawn up. Three omissions and three problematic additions are discussed in the paper attached to this statement.

I should like to draw the attention of the Committee to the three omissions.

The first is a criticism of the Portuguese "consent" to FRETILIN's action. The original English version, in the very first paragraph, upbraids Portugal for giving its consent to the unilateral declaration of independence by FRETILIN, although Portugal did not in fact do so. The United Nations version does not mention "consent", but refers only vaguely to "the attitude of the Portuguese Government concerning it" that is, the proclamation of independence. Then it condemns the unilateral action of FRETILIN, as it "contradicts the real wish of the people of Portuguese Timor".

Why did the drafters of the original declaration state that Portugal had given its consent to FRETILIN's unilateral declaration of independence?

The Indonesian news agency, Antara, reported on 29 November 1975 that the Indonesian Government, in a press release, had criticized the Portuguese Government for clearly signalling an approval of FRETILIN's unilateral action of proclaiming of independence. On 1 December of that year, Antara reported that

> "the unilateral declaration of independence by Fretilin, which was approved by Portugal, is a clear violation of the Memorandum of Understanding in Rome",

and quoted UDT leader Mr. Francisco Lopes da Cruz as saying,

> "Therefore, we too regard ourselves not bound anymore by the Rome agreement".

The disappointment supposedly felt by the drafters of the declaration originates in the actions of two parties, FRETILIN and the Portuguese Government, and this perception appears to be what led the drafters to conclude that there was no longer any possibility for negotiations. After these Antara reports, however, the Indonesian Government never described the Portuguese attitude as one that expressed or implied approval of FRETILIN's action.

The omission of this reference in the United Nations version suggests that Indonesia was trying to conceal the fact that one of the two pillars on which the basic arguments of the declaration stood was misinformation. This misinformation is highly likely to have come from the Indonesian side.

The second omission is that of any mention of the Netherlands. The original version attributes the separation of East Timor and West Timor to two colonial Powers, Portugal and the Netherlands. The United Nations version, however, speaks in terms of a 400-year separation of East Timor from Indonesia, a separation it attributes solely to Portugal.

Indeed, the original version carefully avoids stressing ethnic similarities between the East Timorese and the Indonesian people in general. In the original version it is with the Indonesians of the island of Timor — that is to say, the people of West Timor — that the East Timorese are described as having ethnic, moral and cultural ties. And it is with the Indonesian State, not the people of Indonesia, that, it is hoped, East Timor's strong traditional ties will be resumed.

Such language suggests that for the Timorese drafters integration was still seen as a painful option. It was chosen because the drafters' homeland was now ruled by their political enemies and because that rule was reported to have been approved by the responsible party, Portugal. But the United Nations version, by presenting us with the picture that the people of East Timor had long aspired to integration with the Indonesians in general, conceals the drafters' sentiment that the integration was, rather, a last resort.

The third omission, and perhaps the most important one, is the whole second paragraph. This paragraph laments that

> "the conditions for the self-determination of Portuguese Timor people regarding to choose freely its own destiny were not carried out in execution".

This perhaps refers to the lack of a referendum, since a referendum continued to be the main goal of the four parties.

From documents which were made available to me, it is clear that the four East Timorese parties continued to support the idea of a referendum even after the Balibo declaration. The drafters' aim was to restore peace and order. They wanted to restart a new decolonization process under normalized conditions which was to have culminated in a referendum.

The Balibo declaration did not ask Indonesia to eliminate the political enemies of the four parties. It did not ask Indonesia to rescue the people of East Timor as a whole from misfortune. It did not ask Indonesia to realize integration by force on behalf of the East Timorese. It asked Indonesia only to protect the lives of those who now regarded themselves as Indonesians.

It is true that the Balibo declaration was used as an excuse for Indonesia to intervene. But what Indonesia actually did was far more destructive than had been anticipated. Indonesia must have been fully aware of what it was going to get from this declaration and what had to be hidden when it was presented to the international community. This means that Indonesia was consciously intervening in what were basically the affairs of East Timorese society.

Here I recall an interesting piece of information we got from a Japanese Government official. According to that information, Indonesia told Japan that it would withdraw from East Timor when order was restored there. Then, according to the official, there was a heated discussion among Japanese officials, and most of them believed what Indonesia had told them. The question of whether the East Timorese leaders were also deceived, like the Japanese officials, is yet to be answered. But if at the time of the Balibo declaration the East Timorese leaders still had not abandoned the idea of a referendum, which is in fact very likely, then we must say that what the declaration asked Indonesia to do was quite different from what Indonesia actually did.

It is not too late for the international community to realize this hidden fact of the declaration and to know exactly what happened at this crucial point in the history of this disputed area. The Balibo declaration is just another example of Indonesia's intervention in the affairs of the East Timorese. Indeed, there is a persistent pattern of such intervention by Indonesia in the history of this problem. Indonesia had the view that an independent East Timor would easily become a target for intervention by other countries. But, ironically, it was only Indonesia that actually intervened.

The petitioner withdrew.

At the invitation of the Chairman, Mr. Azancot de Menezes (Timorese Defence Association) took a place at the petitioners' table.

The Chairman: I call on Mr. de Menezes.

Mr. de Menezes (Timorese Defence Association) (*interpretation from Spanish*): The Timorese Defence Association thanks you, Mr. Chairman, for the opportunity to speak before the Committee.

The seventh of December of this year will mark the twentieth anniversary of the annexation of East Timor by the Indonesian military forces. That anniversary represents 20 years of imprisonment, torture and summary executions of Timorese children, women and men, 20 years of genocide against the people of East Timor, bringing death to more than 200,000 Timorese — a third of the population.

During these 20 long years the Timorese resistance has remained alive and resolute in its resistance to the occupation by the Indonesian forces. That is possible only because the guerrillas have the unquestionable support of the population. This clearly demonstrates the people's rejection of the integration of East Timor into Indonesia and its determination in the struggle against the invader. This, difficult though it may be for the Soeharto regime to accept, is the overriding proof that the Timorese population's culture and particular way of life is not to be identified with Indonesia.

However, the rejection of the integration of East Timor into Indonesia is not the only issue here. Irrespective of the existence or non-existence of opposition to the occupation by Indonesia, the key point is that there have been verifiable violations of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights — in sum, the International Bill of Human Rights. The real issue here is that the people of East Timor have been denied the opportunity freely to choose their destiny because the various relevant resolutions of the General Assembly and the Security Council have not been implemented.

These and other issues relating to the question of Timor were analysed and discussed at the International Inter-Parliamentary Conference on East Timor, which met in Lisbon from 31 May to 2 June of this year. The Timorese Defence Association and other Timorese organizations participated in that Conference, which was also attended by Members of Parliament from States of the European Union, such as Austria, Belgium, Denmark, Spain, Greece, the Netherlands, Ireland, Luxembourg, the United Kingdom and Sweden; Members of Parliament from European countries non-members of the European Union, such as Cyprus, Latvia, Poland, the Czech Republic, Romania and Switzerland; Members of Parliament from American States, such as Argentina, Brazil, Peru, Uruguay and Venezuela; Members of Parliament from States of Oceania, such as Australia and New Zealand; Members of Parliament from Asian States, such as Japan and Thailand; and Members of Parliament from African States, such as Angola, Cape Verde, Guinea-Bissau, Mauritius, Mozambique and Sao Tome and Principe. Also present were many foreign personalities, there to defend the Timorese people's right to self-determination.

We wish to take this opportunity to hail all the countries and international organizations that attended the Inter-Parliamentary Conference in Lisbon, and in particular our brothers from Angola, Cape Verde, Guinea Bissau, Mozambique and Sao Tome and Principe.

The participants were unanimous in condemning Indonesia and in demanding complete compliance with the resolutions of the United Nations on East Timor. Many other recommendations were adopted on the question of the self-determination of the Timorese people. These recommendations are included in the document of the Conference — the Lisbon Declaration — which was later made public.

The growing expressions of support for the cause of East Timor, which have included the presence of 70 Members of Parliament and senators from all continents at the Lisbon Inter-Parliamentary Conference on East Timor, not only demonstrate solidarity with the Timorese people but also represent principally a criticism of the United Nations lack of consistency.

This lack of consistency can be seen in the fact that, according to the principles of the Charter of the United Nations and General Assembly resolutions 1514 (XV) and 1541 (XV) of 14 and 15 December 1960, respectively, the peoples of Non-Self-Governing Territories are empowered freely to choose independence, integration with an independent State or association with an independent State.

It is also inconsistent because, according to the Principles annexed to resolution 1541 (XV) of 15

December 1960, a Non-Self-Governing Territory can achieve full autonomy only when, first, integration with an independent State is on the basis of complete equality between the peoples of the erstwhile Non-Self-Governing Territory and those of the independent country with which it is integrated; secondly, when the integrated territory has attained an advanced stage of self-government with free political institutions, so that its peoples would have the capacity to make a responsible choice through informed and democratic processes; and thirdly, when the integration is the result of the freely expressed wishes of the people of the Non-Self-Governing Territory, as determined through democratic methods.

None of this has occurred since the invasion and annexation of East Timor. On the contrary, Indonesian forces have caused the deaths of more than 200,000 Timorese people. They torture and detain indiscriminately; they rape adolescents; and they are carrying out a policy of true cultural genocide through, in particular, the destruction of family and social structures, the imposition of a foreign language and the banning of the Portuguese language, and through restrictions on the freedom of the Catholic Church.

In the face of this holocaust in a territory under Portuguese administration, the United Nations, displaying a complete lack of consistency, has limited itself to producing resolutions without subsequently acting in accordance with them.

The Timorese Defence Association proposes, in conformity with its statutes, to be an advocate for the international situation of the Timorese people from the perspective of defending the values of human rights and democracy and of taking a stand with regard to events. We are convinced that human-rights violations in East Timor will end only with the withdrawal of Indonesian forces from the Territory and with the re-establishment of the rule of law.

The Timorese Defence Association, which was founded by dozens of Timorese nationalists and is headed by Timorese people, demands the return of Portugal so that, with the help of the United Nations, other States and international organizations, the decolonization process, which was interrupted by the invasion and annexation of East Timor, can be completed.

The Timorese Defence Association, also on the basis of recent messages received from East Timor from the leader of the Timorese resistance, Shalar Kosi, rejects any solution that would lead to "special autonomy for East Timor", namely, the integration of East Timor with Indonesia.

The Timorese Defence Association desires self-determination for East Timor until a truly just, dignified and honourable solution is reached for its people.

In view of the current situation, the Timorese Defence Association recommends to the United Nations to ensure as urgently as possible the implementation of the following measures:

First, acceptance of the representation of East Timor before the United Nations by envoys from all the Timorese organizations recognized by the administering Power as defenders of the human rights and the cause of the people of East Timor;

Secondly, the opening of the Territory of East Timor to journalists and international organizations that defend human rights;

Thirdly, the release of all Timorese political prisoners from the prisons of Indonesia and East Timor;

Fourthly, the proclamation by the United Nations, according to the Lisbon Declaration, of 7 December as the international day for East Timor;

Fifthly, the withdrawal of the Indonesian military forces from East Timor and their replacement by United Nations police forces;

And sixthly, the implementation, in phases, of Security Council resolutions relating to the self-determination of the people of East Timor.

Before concluding, we should like to make a strong appeal to the United Nations, during the celebration of its fiftieth anniversary and given the recent statement of the Hague tribunal on the illegal occupation of East Timor by Indonesia, to make a sincere and major contribution to resolving, in accordance with the provisions of the Charter of the United Nations, the situation in East Timor.

The petitioner withdrew.

At the invitation of the Chairman, Mr. Warren Allmand (Parliamentarians for East Timor) took a place at the petitioners' table.

The Chairman: I call on Mr. Allmand.

Mr. Allmand (Parliamentarians for East Timor): My name is Warren Allmand. I am a member of the Canadian Parliament and also a member of Parliamentarians for East Timor (PET). PET is an international organization comprising more than 350 Members of Parliament, senators and elected representatives from 50 countries. All its members support human rights for East Timor and are dedicated to having their respective countries recognize East Timor's inherent right to self-determination.

PET members recognize that the East Timorese have been denied their right to self-determination. Hence, our organization welcomes the consultations that the Secretary-General is currently moderating between Portugal and Indonesia with a view to exploring avenues for achieving a comprehensive settlement of the problem. Parliamentarians for East Timor acknowledges the steps which have been taken to bring Portugal and Indonesia into negotiations. However, we also believe that these negotiations will not lead to a just settlement unless they do the following: firstly, involve representatives of the East Timorese people, including those who resist the present occupation; secondly, secure an end to hostilities which prevent the people of East Timor and their representatives from contributing freely to negotiations leading to self-determination; thirdly, provide internationally acceptable conditions of access to relief and development agencies and to independent visitors, journalists and diplomats; and fourthly, include an act of self-determination free from interference and verified by international observers acceptable to the East Timorese people.

In June of this year, more than 100 Members of Parliament from 32 countries met in Lisbon to discuss East Timor and to develop a plan of action. The Lisbon Declaration, as the plan of action is referred to, included action for national Parliaments as well as for the United Nations. I will not go through the entire Declaration, as I have made copies available to members of the Committee. However, I wish to take a moment to highlight aspects that specifically relate to the United Nations.

Members of PET exhort the Republic of Indonesia to abide by United Nations resolutions on East Timor; call on the United Nations to ensure respect for human rights in East Timor; urge the United Nations and all Governments and Parliaments of the countries that have been selling arms to Indonesia to take measures aimed at enforcing an international embargo on such trade; demand the immediate release of Xanana Gusmão and all Timorese political prisoners held in custody in Indonesia and East Timor; urge United Nations Member States, specifically the Powers with influence in the area, to cooperate in the search for an internationally acceptable solution that would enable the East Timorese people to exercise their inalienable right to self-determination; request the United Nations to proclaim 7 December as the International Day of East Timor; pay tribute to the heroic and tragic saga of the people of East Timor in their struggle for freedom and the preservation of their centuries-old identity; request the Secretary-General to call on the Government of Indonesia to comply with the recommendations of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, which have so far been ignored; request the Commission on Human Rights to call on the Government of Indonesia to report to the Commission on Indonesia's compliance with the recommendations of the Special Rapporteur; and request the United Nations High Commissioner for Human Rights to visit East Timor and to report to the Secretary General, the Commission on Human Rights and the international community on compliance by Indonesia with the report of the Special Rapporteur on summary executions, the reported abuses of fundamental human rights and the compliance of Indonesia with its duty to accord to the people of East Timor the right to self-determination accorded to them by international law.

As the Committee is well aware, there are many documented reports outlining the gross, flagrant and ongoing human rights violations in East Timor. One document that to date has not been made public is the report of Canada's Ambassador to Indonesia, Mr. Lawrence Dickenson, on his visit to East Timor in February of this year. There are many important findings contained in this report that I wish to bring to the attention of this Committee. The document reads more like an Amnesty International report than one by a Canadian Ambassador. It outlines human rights violations as facts. Perhaps that is what makes this report so valuable — and, until now, so downplayed by the Canadian Government. Indonesia, I must note, is also an economic and political partner of Canada. At the same time, human rights are an important aspect of Canadian foreign policy. Therefore, this report is all the more important given the context.

The report noted that this had been "the most disturbing visit by [the] Embassy in [the] post-November-1991 period". This is a reference to the Dili massacre, where the Indonesian military opened fire and killed hundreds of East Timorese, wounding several hundred

others; to date more than 200 remain unaccounted for. The Embassy notes that there has been a military crackdown in East Timor since the Heads of State left the meeting of the Asia-Pacific Economic Cooperation (APEC) forum that was held in Jakarta in November 1994. The report goes on to note that

> "this action has consisted of intimidation, stepped up military and police visibility, arrest and ... ill-treatment, and since January 1995 a number of cases of death, disappearance and severe beatings".

In early 1995, the Ambassador described the situation in East Timor as having "recently taken a decided turn for the worse". Ambassador Dickenson goes on to document the many cases of arrests, intimidation, beatings and torture of detainees, the murder of members of the civilian population, and the "ninja" vigilante gangs that had been raining terror on Dili. Mr. Dickenson summarizes:

> "... all in all, a picture of a concerted, if poorly coordinated, attempt by security forces to neutralize opposition to Indonesia's rule in East Timor. Ominously, a number of our contacts described the situation as very much like the period immediately prior to 12 November 1991".

Canada's Ambassador visited every major region in East Timor in order to provide the Canadian Government with a complete overview of the human rights situation in East Timor. He said,

> "With regard to the Liquica killings in January 1995, the most credible reports ... were that the six people killed in Liquica were each tied up and shot twice in the head at close range".

When the Canadian delegation arrived in Dili, a curfew was in effect due to the "ninja" gangs that were terrorizing the citizens. Canada's Ambassador himself questioned why he was told not to leave his hotel at night, given that the military and police chief had said that the "ninjas" were only rumours. The Ambassador then notes:

> "coincidentally, the police chief announced later the same day that 12 persons had been arrested in connection with the 'ninja' activities and that the streets were now safe".

In Baucau, after investigating the 1 January riots, the Ambassador noted that the casualties might be much higher than previously reported. The Canadian delegation also

> "heard reports about a door-to-door campaign to warn local residents against reporting family members missing. We were told ... that the victims of the shooting brought to the hospital were warned both by their doctors and by military personnel not to divulge the true origin of their injuries".

In Suai, the Ambassador notes, the local hospital reports difficulty in administering inoculations

> "because the local population is wary of medical services, apparently because of past experiences with population control programmes".

All in all, the Ambassador concludes that there is indeed a military crackdown in East Timor that has led to increased human-rights violations. However, the report ends there, with no proposed solutions for the intolerable situation that has continued for almost 20 years.

In the words of the 30 June 1995 decision of the International Court of Justice on the case between Portugal and Australia:

> "Portugal's assertion that the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character, and is irreproachable. The principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court ... It is one of the essential principles of contemporary international law".

Further, the Court emphasized

> "that, for the two Parties, the Territory of East Timor remains a Non-Self-Governing Territory and its people has the right to self-determination".

Self-determination is described as a right *erga omnes*, one that is binding on all States. This indicates that the Court's determination extends to Indonesia. Although the Court decided in favour of Australia, this ruling endorses the key point of the Portuguese argument.

As the recent report by Canada's Ambassador to Indonesia clearly demonstrates, and as testimony presented today will further support, there is ample evidence that human rights violations in East Timor are continuing to mount under the illegal Indonesian occupation. As the decision of the International Court of

Justice further demonstrates, East Timor has never been granted the opportunity to exercise its inherent right to self-determination. Therefore, Parliamentarians for East Timor calls upon the Special Committee on decolonization to make without delay a recommendation to the next session of the General Assembly that a draft resolution on East Timor be put forward, calling for the withdrawal of Indonesian troops and a free, fair and United Nations-monitored election on the issue of self-determination. If the Special Committee submits such a recommendation, the Committee can be assured that members of Parliamentarians for East Timor in all 50 countries where we have such members will actively lobby their United Nations representatives to support such a draft resolution.

I thank members for the opportunity to address this Committee and commend them in their goal of achieving complete decolonization by the year 2000.

The petitioner withdrew.

The meeting rose at 1.10 p.m.